MICHIGAN ELECTRIC AND GAS ASSOCIATION

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Testimony of James A. Ault,
Michigan Electric and Gas Association

On Senate Bill 437 Proposed(S-1)
Energy Regulatory Measures

October 8, 2015

Dear Chairman Nofs and Committee Members:

On behalf of the Michigan Electric & Gas Association (MEGA), a trade association of the investor-owned public utilities listed below, I am expressing support for the approach taken in SB 437, proposed (S-1) while offering suggestions for improvement in certain areas.

MEGA appreciates the ongoing efforts by this Committee and the 2014 working group to investigate Michigan's electric and gas utility regulatory circumstances. The level of engagement by individual committee members and your receptivity to input from all interests is much appreciated.

We offer general comments through the testimony below on key aspects of SB 437 identified in the headers. The attachment provides specific changes to the bill language we believe would improve the proposal, consistent with your expressed desire to receive such proposed language.

Rate Case Procedures

Although some MEGA utilities used the rate self-implementation procedure on occasion, most of the smaller utility cases are settled in timely fashion before the MPSC and regulatory lag is not an issue in those matters. We can support the removal of self-implementation in Section 6a (1) coupled with reducing the overall case processing time from 12 to 10 months. For small gas utilities, however, regulatory lag could remain a significant financial risk because gas utility revenue is concentrated in the winter heating season months. As a measure of discretionary protection, we are proposing a limited version of the "partial and immediate" rate relief measure from pre-2008 regulatory law. This element would allow a natural gas utility

to request early relief while the case remains pending but the relief would not be automatic at the utility's discretion and interested parties would have the ability to contest it before the MPSC. We have attached a sheet prepared by SEMCO Energy with more detail on this issue.

Revenue Decoupling

MEGA wishes to express its support and thanks for the language in Section 6a (10) that restores the MPSC discretion to approve revenue decoupling measures for electric utilities. Revenue decoupling lowers the association of utility fixed cost recovery (including return) from the volume of commodity sales, making the utility indifferent to selling less of its product. Measures that reduce sales, such as energy efficiency and distributed generation, can be added without harming the utility financially. Many believed that the MPSC's broad rate-setting authority included the ability to consider decoupling proposals, but the legislature's specific reference to natural gas decoupling in the 2008 energy law reforms led a reviewing court to find that there was no general authority to consider electric decoupling, which had not been mentioned. Section 6a(10) returns electric decoupling to the MPSC's discretionary toolbox of rate-setting options.

Power Supply Cost Recovery (PSCR)

PSCR cases include the review and evaluation of an electric utility's 5-year demand forecast and forward resource planning. The new integrated resource planning (IRP) process included in SB 437 overlaps this element of a PSCR case. MEGA proposes adding language in Section 6j as a new subsection to indicate that the parties in a PSCR case do not need to re-litigate issues decided in the utilities IRP plan.

Integrated Resource Planning

MEGA supports the IRP concept and basic process for electric utilities in the revised Section 6s. An IRP approach allows the supply plan, and the resource mix including any renewables and energy efficiency programs, to be closely aligned with an individual utility and its service area characteristics. This fosters achievement of the overall adaptability policy concept better than a statewide, standardized approach. We particularly appreciate the IRP regulatory flexibility provisions for smaller and multistate utilities in Section 6s (3). In reviewing this section, we have noted some areas of potential technical improvement regarding the process, timing, and language. These

items are reviewed with explanation and proposed language in the second attachment.

The Section 6s proposed amendments remove some of the previous language regarding certificates of necessity (CON) for major projects. MEGA member Indiana Michigan Power Company received a CON for its Cook Nuclear Plant life cycle management project in MPSC Case No. U-17026 (1-28-13 order) and we propose language in the attachment to assure continued effectiveness of previous CON orders.

Retail Electric Choice

MEGA has testified before the House Energy Policy Committee in support of the complete elimination of retail electric choice, respecting contractual commitments. Retail choice was adopted in 2000 as part of a national effort to promote competition and innovation in electric generation, with utilities transitioning away from vertical integration models and all customers having multiple provider options. The reality is something different - retail choice became a way for some business customers to bypass the local generation providers and obtain cheap wholesale power, when it became available due to surplus capacity in the Midwest region and a drop in natural gas prices, from traditional generation sources. Utilities are left to plan their resource adequacy in the uncertainty over the ability of choice customers to swing back and forth from utility to choice service. Michigan and its policymakers struggle with the divisiveness created by the current hybrid market. The larger customers on utility service have seen some relief independent of choice due to de-skewing under the 2008 reform and the recent industrial rate design cases.

The AES providers at first chose not to enter the service territories of smaller investor owned utilities, but they eventually picked their opportunities to seek out targeted customers, which has a significant impact on the utility in areas of the state with low growth and challenging economic conditions.

MEGA recognizes the compromise to preserve retail electric choice at the 10% cap level, based on political realities. We have proposed changes in the language of Section 10a (1)(G) and (I) in the interest of preventing situations where the cap is rendered meaningless, as provided in the attachment.

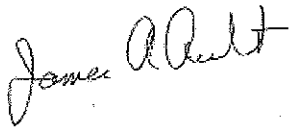
Other Matters

In the attachment, MEGA also proposes changes to Section 6t (performance regulation study), 10r (renewable program) and 10t (winter shutoff protection) for reasons set forth in the attachment.

Thanks again for your hard work and respectful consideration of all comments. We are happy to respond to questions or provide further information as needed.

Very truly yours,

MICHIGAN ELECTRIC AND GAS ASSOCIATION



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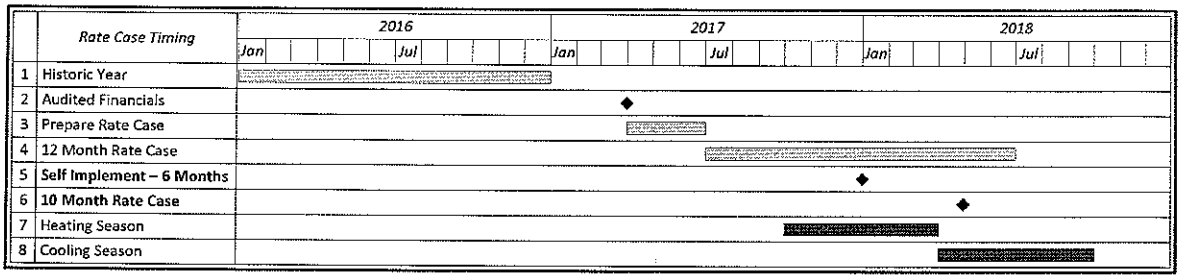
SEMCO Energy's Proposed Interim Rate Relief for Gas Utilities



For a gas utility, a majority of the revenue is earned during the winter months. The current law allowing for interim self-implemented rates after 6 months, typically January 1st, allows for a gas company to earn allowed rates for a portion of the winter period (Jan-Mar). Eliminating the 6 month option and changing the rate case term from 12 to 10 months has a significant negative impact to natural gas utilities. It essentially pushes recovery to the following heating season adding another year of regulatory lag. This change has a far less impact for electric companies, who earn more during the summer months.

SEMCO Energy requests consideration for timely recovery of investment and rate relief for natural gas utilities. One way to address concern is to add the language below to SB 437 (S-1):

CONCURRENTLY WITH A COMPLETE APPLICATION, OR AT ANY TIME AFTER FILING A COMPLETE APPLICATION, A GAS UTILITY SERVING FEWER THAN 1,000,000 CUSTOMERS MAY FILE A MOTION SEEKING PARTIAL AND IMMEDIATE RATE RELIEF. AFTER GIVEN NOTICE TO THE INTERESTED PARTIES WITHIN THE SERVICE AREA TO BE AFFECTED AND AFFORDING INTERESTED PARTIES A REASONABLE OPPORTUNITY TO PRESENT WRITTEN EVIDENCE AND WRITTEN ARGUMENTS RELEVANT TO THE MOTION SEEKING PARTIAL AND IMMEDIATE RATE RELIEF, THE COMMISSION SHALL MAKE A FINDING AND ENTER AN ORDER GRANTING OR DENYING PARTIAL AND IMMEDIATE RELIEF. SUCH ORDER SHALL BE ENTERED WITHIN 180 DAYS OF THE SUBMISSION OF THE MOTION SEEKING PARTIAL AND IMMEDIATE RATE RELIEF.

MEGA PROPOSE MODIFICATIONS
TO SENATE BILL 437 (S-1)

1. **Interim Relief, Section (Sec) 6a(1) (PP 3-5):** The S-1 substitute bill (Bill) strikes the existing provisions added by 2008 PA 286, authorizing self-implementation of requested rate increases after the case is pending before the MPSC for at least 180 days. Gas utilities collect most of their revenue during the winter heating season and regulatory lag addressed by self-implementation could be particularly harmful. MEGA proposes the following language to allow limited use of the "partial and immediate rate relief" concept that was a discretionary power of the MPSC for many years before 2008. This will allow regulatory flexibility and, unlike self-implementation, the MPSC makes the decision whether early implementation is supported by circumstances. Interested parties have the opportunity to contest a request and any overcollection would be refunded via the final order. The following language would be added to the Bill on P 5, L21 just before subsection (2):

   > Currently with a complete application, or at any time after filing a complete application, a gas utility serving fewer than 1,000,000 customers may file a motion seeking partial and immediate rate relief. After giving notice to the interested parties within the service area to be affected and affording interested parties a reasonable opportunity to present written evidence and written arguments relevant to the motion seeking partial and immediate rate relief, the Commission shall make a finding and enter an order granting or denying partial and immediate relief. Such order shall be entered within 180 days of the submission of the motion seeking partial and immediate relief.

2. **Power Supply Cost Recovery, Sec 6j (PP 11-25):** The PSCR statute, in Sec 6j (4)-(6), requires electric utilities to file a 5-year forecast and plan for its power supply, including descriptions of contracts and arrangements and a demonstration of resource adequacy. The MPSC must then evaluate the reasonableness of the plan considering specific criteria that will likely also be addressed in the new integrated resource planning (IRP) process established via modification of Sec 6s. To prevent redundancy and foster effective use of administrative and company resources, MEGA proposes that a new subsection (20) be added at P 25 of the Bill, after L24 at the end of Sec 6j, to read as follows:

   > (20) Notwithstanding any other provisions of this act, issues addressed and determinations made in an integrated resource planning case for an electric utility under Section 6s shall not be redetermined in power supply plan and reconciliation cases under this section. The commission shall rely on the utility's

approved integrated resources plan in any power supply cost recovery proceeding.

3. **Integrated Resource Plan (IRP) Sec 6s (PP 25-41):** There are several technical issues in the Bill regarding the logical order of the provisions on IRP and need for clarification, as follows:

   - Phase 1 (statewide parameters) should "identify" rather than "determine" initial inclusions for infrastructure investments, resources, infrastructure limits and fuel costs. Determinations, if any, are made in Phase 3 (IRP).

   - Phase 1 is inflexible in saying a utility "must use" the scenarios and assumptions when matters will be determined in Phase 3 (utility plan). We propose that utilities "must consider" Phase 1 parameters in developing plans, to allow any appropriate deviations to be determined in contested Phase 3.

   - There is redundancy in setting forth the Phase 1 directives for the MPSC and for the modeling scenarios and assumptions. The language proposed below attempts to reduce redundancy while preserving the elements to be considered.

   - There is no time line for completion of Phase 1, yet timely completion is essential for allowing sufficient time to develop the RFPs (Phase 2) and IRP (Phase 3). Times could run from the final Phase 1 document. The language below adds a completion time for Phase 1.

   - Phases 2 and 3 are presented out of sequence in the draft; the language below moves the RFP process up since that occurs before a utility filing. The MPSC filing requirements order is moved to a separate section, with a time requirement 1 year ahead of plan filings.

   - Phase 2 (RFP) would not be necessary before the IRP for utilities with adequate resources. Language is added to the section to clarify this.

   - The MPSC should request the MDEQ advisory opinion very early in Phase 3, at a specified time (30 days after plan filing?).

   - The language on MPSC standards for an IRP, in subsection (13), should precede the Phases 2-3 language. Sec 6s (2) and (13) apparently cover the same thing. The many details in (13) could be moved to an MPSC order setting the IRP requirements.

The following language is proposed, using the language in the Bill (in red) with modifications/edits shown in contrasting color (green). Although the red language is taken directly from proposed S-1, the order of some

provisions has been changed to match the time sequence of events in the procedure as noted above.

> (1) The commission shall, within 120 days of the effective date of the amendatory act that added section 6t and every 4 years thereafter, commence a proceeding to establish statewide parameters for integrated resource plans required under subsection (4). The commission shall, in consultation with the Michigan Agency for Energy and the Department of Environmental Quality, do all of the following in a proceeding under this subsection:
>
> (a) Conduct an assessment of the potential for reduction in energy waste in this state, based on what is economically feasible, as well as technologically feasible.
>
> (b) Identify any new state or federal environmental standard, law, or rule and how that standard, law, or rule would affect electric utilities in this state.
>
> (c) Identify any proposed state or federal environmental standard, law, or rule that has been published in the Michigan register or the federal register and how the proposed standard, law, or rule would affect electric utilities in this state.
>
> (d) Identify any required resource adequacy standards in areas of this state.
>
> (e) Establish the modeling scenarios and assumptions each electric utility must consider in developing its integrated resource plan filed under subsection (4), including the laws, standards and rules described above and all of the following:
>
> *(i)* Any identified need for investments in generation, transmission, and distribution infrastructure.
>
> *(ii)* Supply-side and demand-side resource potential to address a need for additional generation capacity, including, but not limited to, available electric generation technologies, potential energy waste reduction measures, and potential load management and demand response measures.
>
> *(iii)* Regional infrastructure limitations affecting this state.

(iv) The projected costs of different types of fuel used for electric generation.

(f) Allow other state agencies to provide input regarding any other regulatory requirements that should be included in modeling scenarios or assumptions.

(g) Publish a copy of the proposed modeling scenarios and assumptions to be used in integrated resource plans on the commission's website.

(h) Before issuing the final modeling scenarios and assumptions each electric utility must consider in developing its integrated resource plan, receive written comments and hold hearings to solicit public input regarding the proposed modeling sceniaros and assumptions. The final modeling scenarios and assumptions shall be issued within 240 days after the start of the proceedings.

(2) Not later than 1 year after the effective date of the amendatory act that added section 6t, the commission shall issue an order establishing filing requirements and standards, including application forms and instructions, for an integrated resource plan that demonstrates how the utility will comply with requirements to provide generation reliability, including meeting planning reserve margin requirements established by the commission for a federally authorized regional transmission system operator for a 5-year, 10-year, and 15-year planning period.

(3) Before filing its first integrated resource plan under this section, each electric utility whose rates are regulated by the commission shall issue a request for proposals to provide any new supply side generation capacity resources needed to serve the utility's reasonably projected electric load and applicable planning reserve margin for its customers in this state and customers the utility serves in other states during the initial 3-year planning period to be considered in its integrated resource plan to be filed under this section. The request for proposals is only required before the utility's filing of its first integrated resource plan and only if the utility projects a need to construct or purchase new supply side capacity resources. Responses to a request for proposals issued under

this subsection should include proposals to provide supply side turnkey construction of generating capacity resources, renewable generation, or capacity storage, which assets are designed to be purchased by the utility, and may include proposals for the sale of existing generating assets, but shall not include proposals for demand side resources. Respondents to a request for proposals may request that certain proprietary information be exempt from public disclosure as allowed by the commission. A utility that issues a request for proposals under this subsection shall use the resulting proposals to inform its integrated resource plan filed under this section and include those proposals as part of its integrated resource plan. A utility is not required to accept any proposal submitted in response to its request for proposals.

(4) Not later than 2 years after the effective date of the amendatory act that added section 6t, each electric utility whose rates are regulated by the commission shall file with the commission an integrated resource plan that minimizes the net present value of forward-looking capital and production costs while meeting all applicable state and federal reliability and environmental regulations and provides a long-term projection of the utility's load obligations and a plan to meet those obligations over the ensuring term of the plan.

(5) Within 30 days of a utility's plan filing, the commission shall request an advisory opinion from the Department of Environmental Quality regarding whether the integrated resource plan can reasonably be expected to achieve compliance with applicable state and federal environmental regulations, and whether the proposed integrated resource plan can reasonably be expected to result in pollution reductions required by applicable state or federal regulations. The commission may invite other state agencies to provide testimony regarding other relevant regulatory requirements related to the integrated resource plan. The commission shall permit reasonable discovery after an integrated resource plan is filed and during the hearing in order to assist parties and interested persons in obtaining evidence concerning the integrated resource plan, including, but not limited to, the reasonableness and prudence of the plan.

MEGA does not propose changes to the remaining provisions in proposed S-1, Section 6s except for renumbering as appropriate, and inclusion of a separate subsection on the CON prior order validation issue, worded as follows:

> (N) All rights, duties and obligations established by orders issued by the commission under authority of section 6s as it existed before the effective date of the amendatory act that added section 10t and modified section 10s remain in effect, continuing the same rights, duties and obligations that existed under the law and orders prior to the passage of this act.

4. **Performance Based Regulation (PBR) Study Sec. 6T:** This section directs a PBR study with the MPSC to provide a report and recommendations. Subsection (3), however, dictates elements to be included in a PBR system, before the study is developed. MEGA suggests leaving elements of a PBR system for determination in the MPSC study, to be debated during the study and in any further legislative or regulatory proceedings resulting from the study.

   Proposal: Eliminate subsection (3).

5. **Sec. 10a Service from Alternative Electric Providers (AES):** Depending on the timing of the final legislation, the dates for the customer elections and notifications to the MPSC will need adjustment.

   Subsection (1)(G) provides for an AES customer to expand usage at an existing or new facility free of the 10% choice cap limitation. We recognize that the intent of this provision is to allow for expansion of usage that the utility has not planned to serve. However, this "cap buster" provision should not allow unlimited expansion to new facilities of a customer with a chain of operations.

   Proposal: Add the phrase "at the same location or a contiguous parcel" after "new facility" on P47, L23.

   Subsection (1) (I) removes the 10% cap for the entire load of a customer in the choice queue that moves up to fill headroom that opens up under the cap. This could result in a disruptive situation similar to the Upper Peninsula experience with Cliffs Natural Resources if a very large customer moved up from the queue. The cap would be rendered meaningless.

   Proposal: Change the first sentence of (1) (I) on P49, L4-11 to read as follows:

Provide that if the customer next on the list awaiting retail open access service is notified that less than 10% of an electric utility's average weather-adjusted retail sales for the preceding calendar year is taking service from an alternative electric supplier, the customer may purchase all or any portion of its electricity at a single meter from an alternative electric supplier, except that such service shall not cause the total amount of retail open access service for that utility to exceed 10% of the serving electric utility's average weather-adjusted retail sales, without the utility's consent.

6. **Marketing Disclosures and Renewable Program, Sec. 10r (PP 71-74):**

Sec. 10r(5) from 2000 PA 141 creates the Michigan renewable energy program (MREP), designed to inform utility customers on renewable energy availability and value, but also directing the MPSC to engage in promotion. The promotional aspect should be removed as potentially creating an unjustified preference in the new IRP process. Alternatively, the tasks of promoting renewables should be moved to an independent area of state government such as MEDC.

Proposal: Remove the last sentence of Sec. 10r(5) on P73, L8-10.

Sec. 10r(6) required integration of distributed generation (DG) plans in utility IRP planning, via plan filings in 2009. This section may cause confusion because the new DG provisions in SB 438 and the new IRP process in this bill will apply.

Proposal: Remove this entire subsection on P74, L10-22 as no longer necessary.

7. **Winter Shutoff Protection, Sec. 10t (PP 74-77):** This section was included in 2000 PA 141 because, at that time, retail electric choice was anticipated to become widespread and available to all customer classes. There was a need to assure that AES providers would afford shutoff protection to low-income and senior customers comparable to the winter protection plan of the regulated utilities established by MPSC rules. This section codified the MPSC winter protection rule as it stood in 2000. There are presently few or no residential customers on retail open access service and the MPSC winter protection rules have changed and are augmented by utility plans and newer statutory provisions on shutoff protection, such as 2013 PA 95. Section 10t, however, prevents any MPSC rule updates to the winter protection plan for electric utilities, locking in the 2000 version. See Parts 8-9 of MPSC customer billing rules, MAC R 460.136-460.150 (revised in 2007 and new revisions are now under consideration). Unless circumstances change drastically, there will be no AES service to eligible low-income residential customers and this section is not needed for regulated electric utilities subject to Act 95 and the MPSC billing rules.

Proposal: Delete this entire section.